

103D CONGRESS
1ST SESSION

S. 424

AN ACT

To amend the Securities Exchange Act of 1934
with respect to limited partnership rollups.

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To amend the Securities Exchange Act of 1934 with respect
to limited partnership rollups.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Limited Partnership
5 Rollup Reform Act of 1993”.

1 **SEC. 2. REVISION OF PROXY SOLICITATION RULES WITH**
2 **RESPECT TO LIMITED PARTNERSHIP ROLLUP**
3 **TRANSACTIONS.**

4 (a) AMENDMENT.—Section 14 of the Securities and
5 Exchange Act of 1934 (15 U.S.C. 78n) is amended by
6 adding at the end the following new subsection:

7 “(h) PROXY SOLICITATIONS AND TENDER OFFERS
8 IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP
9 TRANSACTIONS.—

10 “(1) PROXY RULES TO CONTAIN SPECIAL PRO-
11 VISIONS.—It shall be unlawful for any person to so-
12 licit any proxy, consent, or authorization concerning
13 a limited partnership rollup transaction, or to make
14 any tender offer in furtherance of a limited partner-
15 ship rollup transaction, unless such transaction is
16 conducted in accordance with rules prescribed by the
17 Commission under subsections (a) and (d). Such
18 rules shall—

19 “(A) permit any holder of a security that
20 is the subject of the proposed limited partner-
21 ship rollup transaction to engage in preliminary
22 communications for the purpose of determining
23 whether to solicit proxies, consents, or author-
24 izations in opposition to the proposed trans-
25 action, without regard to whether any such
26 communication would otherwise be considered a

1 solicitation of proxies, and without being re-
2 quired to file soliciting material with the Com-
3 mission prior to making that determination, ex-
4 cept that—

5 “(i) nothing in this subparagraph
6 shall be construed to limit the application
7 of any provision of this title prohibiting, or
8 reasonably designed to prevent, fraudulent,
9 deceptive, or manipulative acts or practices
10 under this title; and

11 “(ii) any holder of not less than 5 per-
12 cent of the outstanding securities that are
13 the subject of the proposed limited part-
14 nership rollup transaction who engages in
15 the business of buying and selling limited
16 partnership interests in the secondary mar-
17 ket shall be required to disclose such own-
18 ership interests and any potential conflicts
19 of interests in such preliminary commu-
20 nications;

21 “(B) require the issuer to provide to hold-
22 ers of the securities that are the subject of the
23 transaction such list of the holders of the issu-
24 er’s securities as the Commission may deter-

1 mine in such form and subject to such terms
2 and conditions as the Commission may specify;

3 “(C) prohibit compensating any person so-
4 liciting proxies, consents, or authorizations di-
5 rectly from security holders concerning such a
6 transaction—

7 “(i) on the basis of whether the solici-
8 ted proxy, consent, or authorization either
9 approves or disapproves the proposed lim-
10 ited partnership rollup transaction; or

11 “(ii) contingent on the approval, dis-
12 approval, or completion of the limited part-
13 nership rollup transaction;

14 “(D) set forth disclosure requirements for
15 soliciting material distributed in connection
16 with a limited partnership rollup transaction,
17 including requirements for clear, concise, and
18 comprehensible disclosure, with respect to—

19 “(i) any changes in the business plan,
20 voting rights, form of ownership interest,
21 or the compensation of the general partner
22 in the proposed limited partnership rollup
23 transaction from each of the original lim-
24 ited partnerships;

1 “(ii) the conflicts of interest, if any, of
2 the general partner;

3 “(iii) whether it is expected that there
4 will be a significant difference between the
5 exchange values of the limited partnerships
6 and the trading price of the securities to
7 be issued in the limited partnership rollup
8 transaction;

9 “(iv) the valuation of the limited part-
10 nerships and the method used to determine
11 the value of the interests of the limited
12 partners to be exchanged for the securities
13 in the limited partnership rollup trans-
14 action;

15 “(v) the differing risks and effects of
16 the transaction for investors in different
17 limited partnerships proposed to be in-
18 cluded, and the risks and effects of com-
19 pleting the transaction with less than all
20 limited partnerships;

21 “(vi) the statement by the general
22 partner required under subparagraph (E);

23 “(vii) any opinion (other than an
24 opinion of counsel), appraisal, or report re-
25 ceived by the general partner or sponsor

1 that is prepared by an outside party and
2 that is materially related to the limited
3 partnership rollup transaction and the
4 identity and qualifications of the party who
5 prepared the opinion, appraisal, or report,
6 the method of selection of such party, ma-
7 terial past, existing, or contemplated rela-
8 tionships between the party or any of its
9 affiliates and the general partner, sponsor,
10 successor, or any other affiliate, compensa-
11 tion arrangements, and the basis for ren-
12 dering and methods used in developing the
13 opinion, appraisal, or report; and

14 “(viii) such other matters deemed nec-
15 essary or appropriate by the Commission;

16 “(E) require a statement by the general
17 partner as to whether the proposed limited
18 partnership rollup transaction is fair or unfair
19 to investors in each limited partnership, a dis-
20 cussion of the basis for that conclusion, and an
21 evaluation and a description by the general
22 partner of alternatives to the limited partner-
23 ship rollup transaction, such as liquidation;

24 “(F) provide that any solicitation or offer-
25 ing period with respect to any proxy solicita-

1 tion, tender offer, or information statement in
2 a limited partnership rollup transaction shall be
3 for not less than the lesser of 60 calendar days
4 or the maximum number of days permitted
5 under applicable State law; and

6 “(G) contain such other provisions as the
7 Commission determines to be necessary or ap-
8 propriate for the protection of investors in lim-
9 ited partnership rollup transactions.

10 “(2) SUMMARY.—Disclosure requirements es-
11 tablished under paragraph (1)(D) shall require that
12 soliciting material include a clear and concise sum-
13 mary of the limited partnership rollup transaction
14 (including a summary of the matters referred to in
15 clauses (i) through (viii) of that subparagraph) with
16 the risks of the limited partnership rollup trans-
17 action set forth prominently in the forepart thereof.

18 “(3) EXEMPTIONS.—The Commission may, con-
19 sistent with the public interest, the protection of in-
20 vestors, and the purposes of this title, exempt by
21 rule or order any security or class of securities, any
22 transaction or class of transactions, or any person or
23 class of persons, in whole or in part, conditionally or
24 unconditionally, from the requirements imposed pur-

1 suant to paragraphs (1) and (2) or, from the defini-
2 tion contained in paragraph (5).

3 “(4) EFFECT ON COMMISSION AUTHORITY.—
4 Nothing in this subsection limits the authority of the
5 Commission under subsection (a) or (d) or any other
6 provision of this title or precludes the Commission
7 from imposing, under subsection (a) or (d) or any
8 other provision of this title, a remedy or procedure
9 required to be imposed under this subsection.

10 “(5) DEFINITION.—As used in this subsection
11 the term ‘limited partnership rollup transaction’
12 means a transaction involving—

13 “(A) the combination or reorganization of
14 limited partnerships, directly or indirectly, in
15 which some or all investors in the limited part-
16 nerships receive new securities or securities in
17 another entity, other than a transaction—

18 “(i) in which—

19 “(I) the investors’ limited part-
20 nership securities are reported under
21 a transaction reporting plan declared
22 effective before the date of enactment
23 of this subsection by the Commission
24 under section 11A; and

1 “(II) the investors receive new
2 securities or securities in another en-
3 tity that are reported under a trans-
4 action reporting plan declared effec-
5 tive before the date of enactment of
6 this subsection by the Commission
7 under section 11A;

8 “(ii) involving only issuers that are
9 not required to register or report under
10 section 12 both before and after the trans-
11 action;

12 “(iii) in which the securities to be is-
13 sued or exchanged are not required to be
14 and are not registered under the Securities
15 Act of 1933;

16 “(iv) which will result in no signifi-
17 cant adverse change to investors in any of
18 the limited partnerships with respect to
19 voting rights, the term of existence of the
20 entity, management compensation, or in-
21 vestment objectives; or

22 “(v) where each investor is provided
23 an option to receive or retain a security
24 under substantially the same terms and
25 conditions as the original issue; or

1 “(B) the reorganization of a single limited
2 partnership, directly or indirectly, in which
3 some or all investors in the limited partnership
4 receive new securities or securities in another
5 entity, and—

6 “(i) transactions in the security issued
7 are reported under a transaction reporting
8 plan declared effective before the date of
9 enactment of this subsection by the Com-
10 mission under section 11A;

11 “(ii) the investors’ limited partnership
12 securities are not reported under a trans-
13 action reporting plan declared effective be-
14 fore the date of enactment of this sub-
15 section by the Commission under section
16 11A;

17 “(iii) the issuer is required to register
18 or report under section 12, both before and
19 after the transaction, or the securities to
20 be issued or exchanged are required to be
21 or are registered under the Securities Act
22 of 1933;

23 “(iv) there are significant adverse
24 changes to security holders in voting
25 rights, the term of existence of the entity,

1 management compensation, or investment
2 objectives; and

3 “(v) investors are not provided an op-
4 tion to receive or retain a security under
5 substantially the same terms and condi-
6 tions as the original issue.

7 “(6) EXCLUSIONS.—For purposes of this sub-
8 section, a limited partnership rollup transaction does
9 not include—

10 “(A) a transaction that involves only a lim-
11 ited partnership or partnerships having an op-
12 erating policy or practice of retaining cash
13 available for distribution and reinvesting pro-
14 ceeds from the sale, financing, or refinancing of
15 assets in accordance with such criteria as the
16 Commission determines appropriate;

17 “(B) the combination or reorganization of
18 limited partnerships or the reorganization of a
19 single limited partnership—

20 “(i) in which a non-affiliated party
21 succeeds to the interests of a general part-
22 ner or sponsor, if—

23 “(I) such action is approved by
24 not less than $66\frac{2}{3}$ percent of the out-

1 standing units of each of the partici-
2 pating limited partnerships; and

3 “(II) as a result of the trans-
4 action, the existing general partners
5 are entitled to receive only compensa-
6 tion expressly provided for in the pre-
7 existing limited partnership agree-
8 ments; or

9 “(ii) involving only limited partner-
10 ships wherein the interests of the limited
11 partners are repurchased, recalled, or ex-
12 changed pursuant to the terms of the pre-
13 existing limited partnership agreements for
14 securities in an operating company specifi-
15 cally identified at the time of the formation
16 of the original limited partnership; or

17 “(C) a transaction in which the securities
18 offered to investors are securities of another en-
19 tity that are reported under a transaction re-
20 porting plan declared effective before the date
21 of enactment of this subsection by the Commis-
22 sion under section 11A, if—

23 “(i) such other entity was formed, and
24 such class of securities was reported, not
25 less than 12 months before the date on

1 which soliciting material is mailed to inves-
2 tors; and

3 “(ii) the securities of that entity is-
4 sued to investors in the transaction do not
5 exceed 20 percent of the total outstanding
6 securities of the entity.”.

7 (b) SCHEDULE FOR REGULATIONS.—The Securities
8 and Exchange Commission shall promulgate final regula-
9 tions under the Securities Act of 1933 and the Securities
10 Exchange Act of 1934 which shall become effective not
11 later than 12 months after the date of enactment of this
12 Act to implement the requirements of section 14(h) of the
13 Securities Exchange Act of 1934, as added by subsection
14 (a).

15 **SEC. 3. RULES OF FAIR PRACTICE IN ROLLUP TRANS-**
16 **ACTIONS.**

17 (a) REGISTERED SECURITIES ASSOCIATION RULE.—
18 Section 15A(b) of the Securities Exchange Act of 1934
19 (15 U.S.C. 78o-3(b)) is amended by adding at the end
20 the following new paragraph:

21 “(12) The rules of the association to promote
22 just and equitable principles of trade, as required by
23 paragraph (6), include rules to prevent members of
24 the association from participating in any limited
25 partnership rollup transaction (as such term is de-

1 fined in paragraphs (5) and (6) of section 14(h)) un-
2 less such transaction was conducted in accordance
3 with procedures designed to protect the rights of
4 limited partners, including—

5 “(A) the right of dissenting limited part-
6 ners to one of the following—

7 “(i) an appraisal and compensation;

8 “(ii) retention of a security under sub-
9 stantially the same terms and conditions as
10 the original issue;

11 “(iii) approval of the limited partner-
12 ship rollup transaction by not less than 75
13 percent of the outstanding units of each of
14 the participating limited partnerships; or

15 “(iv) other rights designed to protect
16 dissenting limited partners;

17 “(B) the right not to have their voting
18 power unfairly reduced or abridged;

19 “(C) the right not to bear an unfair por-
20 tion of the costs of a proposed rollup trans-
21 action that is rejected; and

22 “(D) restrictions on the conversion of con-
23 tingent interests or fees into non-contingent in-
24 terests or fees and restrictions on the receipt of
25 a non-contingent equity interest in exchange for

1 fees for services which have not yet been pro-
2 vided.

3 As used in this paragraph, the term ‘dissenting lim-
4 ited partner’ means a person who, on the date on
5 which soliciting material is mailed to investors, is a
6 holder of a beneficial interest in a limited partner-
7 ship that is the subject of a limited partnership roll-
8 up transaction, and who casts a vote against the
9 transaction and complies with procedures established
10 by the association, except that for purposes of an ex-
11 change or tender offer, such person shall file an ob-
12 jection in writing under the rules of the association
13 during the period in which the offer is outstand-
14 ing.”.

15 (b) LISTING STANDARDS OF NATIONAL SECURITIES
16 EXCHANGES.—Section 6(b) of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at
18 the end the following:

19 “(9) The rules of the exchange prohibit the list-
20 ing of any security issued in a limited partnership
21 rollup transaction (as such term is defined in para-
22 graphs (5) and (6) of section 14(h)), unless such
23 transaction was conducted in accordance with proce-
24 dures designed to protect the rights of limited part-
25 ners, including—

1 “(A) the right of dissenting limited part-
2 ners to one of the following—

3 “(i) an appraisal and compensation;

4 “(ii) retention of a security under sub-
5 stantially the same terms and conditions as
6 the original issue;

7 “(iii) approval of the limited partner-
8 ship rollup transaction by not less than 75
9 percent of the outstanding units of each of
10 the participating limited partnerships; or

11 “(iv) other rights designed to protect
12 dissenting limited partners;

13 “(B) the right not to have their voting
14 power unfairly reduced or abridged;

15 “(C) the right not to bear an unfair por-
16 tion of the costs of a proposed rollup trans-
17 action that is rejected; and

18 “(D) restrictions on the conversion of con-
19 tingent interests or fees into non-contingent in-
20 terests or fees and restrictions on the receipt of
21 a non-contingent equity interest in exchange for
22 fees for services which have not yet been pro-
23 vided.

24 As used in this paragraph, the term ‘dissenting lim-
25 ited partner’ means a person who, on the date on

1 which soliciting material is mailed to investors, is a
2 holder of a beneficial interest in a limited partner-
3 ship that is the subject of a limited partnership roll-
4 up transaction, and who casts a vote against the
5 transaction and complies with procedures established
6 by the exchange, except that for purposes of an ex-
7 change or tender offer, such person shall file an ob-
8 jection in writing under the rules of the exchange
9 during the period in which the offer is outstand-
10 ing.”.

11 (c) STANDARDS FOR AUTOMATED QUOTATION SYS-
12 TEMS.—Section 15A(b) of the Securities Exchange Act of
13 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the
14 end the following new paragraph:

15 “(13) The rules of the association prohibit the
16 authorization for quotation on an automated
17 interdealer quotation system sponsored by the asso-
18 ciation of any security designated by the Commis-
19 sion as a national market system security resulting
20 from a limited partnership rollup transaction (as
21 such term is defined in paragraphs (5) and (6) of
22 section 14(h)), unless such transaction was con-
23 ducted in accordance with procedures designed to
24 protect the rights of limited partners, including—

1 “(A) the right of dissenting limited part-
2 ners to one of the following—

3 “(i) an appraisal and compensation;

4 “(ii) retention of a security under sub-
5 stantially the same terms and conditions as
6 the original issue;

7 “(iii) approval of the limited partner-
8 ship rollup transaction by not less than 75
9 percent of the outstanding units of each of
10 the participating limited partnerships; or

11 “(iv) other rights designed to protect
12 dissenting limited partners;

13 “(B) the right not to have their voting
14 power unfairly reduced or abridged;

15 “(C) the right not to bear an unfair por-
16 tion of the costs of a proposed rollup trans-
17 action that is rejected; and

18 “(D) restrictions on the conversion of con-
19 tingent interests or fees into non-contingent in-
20 terests or fees and restrictions on the receipt of
21 a non-contingent equity interest in exchange for
22 fees for services which have not yet been pro-
23 vided.

24 As used in this paragraph, the term ‘dissenting lim-
25 ited partner’ means a person who, on the date on

1 which soliciting material is mailed to investors, is a
2 holder of a beneficial interest in a limited partner-
3 ship that is the subject of a limited partnership roll-
4 up transaction, and who casts a vote against the
5 transaction and complies with procedures established
6 by the association, except that for purposes of an ex-
7 change or tender offer such person shall file an ob-
8 jection in writing under the rules of the association
9 during the period during which the offer is outstand-
10 ing.”.

11 (d) EFFECT ON EXISTING AUTHORITY.—The amend-
12 ments made by this section shall not limit the authority
13 of the Securities and Exchange Commission, a registered
14 securities association, or a national securities exchange
15 under any provision of the Securities Exchange Act of
16 1934, or preclude the Commission or such association or
17 exchange from imposing, under any other such provision,
18 a remedy or procedure required to be imposed under such
19 amendments.

20 (e) EFFECTIVE DATE.—The amendments made by
21 this section shall become effective 12 months after the
22 date of enactment of this Act.

23 **SEC. 4. REVIEW OF FILINGS PRIOR TO EFFECTIVE DATE.**

24 Prior to the effective date of regulations adopted pur-
25 suant to this Act, the Securities and Exchange Commis-

1 sion shall continue to review and declare effective registra-
2 tion statements and amendments thereto relating to lim-
3 ited partnership rollup transactions in accordance with ap-
4 plicable regulations then in effect.

Passed the Senate August 6 (legislative day, June
30), 1993.

Attest:

Secretary.

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